

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Kim Holmes,

Plaintiff,

v.

Carolyn W. Colvin, Acting Commissioner
of Social Security,¹

Defendant.

C/A No. 0:12-3328-TMC

ORDER

On August 20, 2013, the plaintiff filed a motion for attorney's fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412, on the basis that she was the prevailing party and the position taken by the Commissioner in this action was not substantially justified. (ECF No. 25). The Commissioner responded on September 5, 2013, stating she had no objection to the plaintiff's motion for attorney fees. (ECF No. 27).

Under the EAJA, a court shall award attorney's fees to a prevailing party² in certain civil actions against the United States, unless it finds that the government's position was substantially justified or that special circumstances make an award unjust. 28 U.S.C. § 2412(d)(1)(A). The district courts have discretion to determine a reasonable fee award and whether that award should be made in excess of the statutory cap. *Pierce v. Underwood*, 487 U.S. 552 (1988); *May v.*

¹Carolyn W. Colvin became the Acting Commissioner of the Social Security Administration on February 14, 2013. Pursuant to Fed.R.Civ.P.25(d), Colvin should be substituted for Michael J. Astrue as the Defendant in this action.

²A party who wins a remand pursuant to sentence four of the Social Security Act, 42 U.S.C. § 405(g), is a prevailing party for EAJA purposes. *See Shalala v. Schaefer*, 509 U.S. 292, 300–302 (1993). The remand in this case was made pursuant to sentence four.

Sullivan, 936 F.2d 176, 177 (4th Cir. 1991).

The district courts also have broad discretion to set the attorney fee amount. In determining the fee award, “[e]xorbitant, unfounded, or procedurally defective fee applications . . . are matters that the district court can recognize and discount.” *Hyatt v. North Carolina Dep’t of Human Res.*, 315 F.3d 239, 254 (4th Cir. 2002) (citing *Comm’r v. Jean*, 496 U.S. 154, 163 (1990)). Additionally, the court should not only consider the “position taken by the United States in the civil action,” but also the “action or failure to act by the agency upon which the civil action is based.” 28 U.S.C. § 2412(d)(2)(D), as amended by P.L. 99-80, § 2(c)(2)(B).

Applying this standard to the facts of this case, the court concludes that the Commissioner’s position was not substantially justified. Therefore, after a thorough review of the record in this case, the court finds that the plaintiff has made a proper showing under the EAJA and, therefore grants the plaintiff’s motion for attorney’s fees.

The plaintiff seeks an hourly rate in excess of \$125 per hour to adjust for an increase in the cost of living allowance. Specifically, the plaintiff seeks an award of \$186.25 per hour for 25.7 attorney hours for a total of \$4,786.63. The Commissioner has filed no objections to the plaintiff’s calculation of the hourly rate and the court finds the calculation reasonable.

Based on the foregoing, and after considering the briefs and materials submitted by the parties, the court orders that the plaintiff be awarded \$4,786.63 in attorney’s fees.³

IT IS SO ORDERED.

³The court notes that the fees must be paid to Plaintiff. *See Astrue v. Ratliff*, 505 U.S. ____, No. 08-1322, slip op. at 1 (June 14, 2010) (holding that the plain text of the EAJA requires that attorney’s fees be awarded to the litigant, thus subjecting EAJA fees to offset of any pre-existing federal debts); *see also Stephens v. Astrue*, 565 F.3d 131, 139 (4th Cir. 2009) (same).

s/Timothy M. Cain
United States District Judge

September 9, 2013
Anderson, South Carolina